



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings

- against - : FINAL

Police Officer Jason Holloway : ORDER

Tax Registry No. 926421 : OF

Housing PSA 9 : DISMISSAL

Police Officer Jason Holloway, Tax Registry No. 926421, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2018-18615; 2019-20574, 20832 & 21322 as set forth on form P.D. 468-121, dated February 21, 2018, June 3, August 13 and December 5, 2019 respectively, and after a review of the entire record, Respondent, having pleaded Guilty to Specifications 4 and 5 in Disciplinary Case No. 2018-18615; Specifications 1, 2, 3, 4, and 5 in Disciplinary Case No. 2019-20574; Specification 1 in Disciplinary Case No. 2019-20832; and Specifications 1, 2 and 3 in Disciplinary Case No. 2019-21322, is found Guilty as charged; and is found Guilty of Specifications 1, 2 and 3 in Disciplinary Case No. 2018-18615.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Jason Holloway from the Police Service of the City of New York.

DERMOT F. SHEA
POLICE COMMISSIONER

EFFECTIVE: 10/23/2020

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POLICE DEPARTMENT

September 8, 2020

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In the Matter of the Charges and Specifications : Case No.
- against - : 2018-18615
Police Officer Jason Holloway : 2019-20574
Tax Registry No. 926421 : 2019-20832
Housing PSA 9 : 2019-21322

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Kachina Brock, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10032

To:
HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-18615

1. Said Police Officer Jason Holloway, while assigned to 88th Precinct, while off-duty, on or about February 20, 2018, in [REDACTED] County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Holloway engaged in a physical altercation with his girlfriend.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT–
PROHIBITED CONDUCT

2. Said Police Officer Jason Holloway, while assigned to 88th Precinct, while off-duty, on or about February 20, 2018, in [REDACTED] County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Holloway impeded a criminal investigation, in that, he took his girlfriend's cell phone while she was communicating with a 911 operator and stated, "Sorry, we called by mistake."

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT–
PROHIBITED CONDUCT

3. Said Police Officer Jason Holloway, while assigned to 88th Precinct, while off-duty, on or about February 20, 2018, in [REDACTED] County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Holloway took his girlfriend's cell phone away from her and broke it.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT–
PROHIBITED CONDUCT

4. Said Police Officer Jason Holloway, while assigned to 88th Precinct, while off-duty, on or about February 20, 2018, in [REDACTED] County, did fail to remain at the scene of an unusual off-duty incident and immediately notify the patrol supervisor of the incident, to wit: said Police Officer Holloway left the scene and was subsequently escorted to the 88th Precinct from East Stroudsburg, Pennsylvania by the Regional Fugitive Task Force.

P.G. 212-32, Page 1, Paragraphs 2 & 3

OFF-DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE

5. Said Police Officer Jason Holloway, while assigned to 88th Precinct, while off-duty, on or about February 20, 2018, in [REDACTED] County, failed and neglected to safeguard his Department issued Smith & Wesson 9MM.

P.G. 204-08, Page 2, Paragraph 7

FIREARMS
GENERAL REGULATIONS

Disciplinary Case No. 2019-20574

1. Said Police Officer Jason Holloway, while on-duty and assigned to the 88th Precinct, on or about December 7, 2017, did fail and neglect to prepare a Property Clerk's Invoice Worksheet in a timely and proper manner.

P.G. 218-01, Page 1, Paragraph 1

FAIL TO VOUCHER PROPERTY

2. Said Police Officer Jason Holloway, while off-duty and assigned to the 88th Precinct, on or about May 22, 2019, did fail and neglect to store his completed Activity Log in his locker resulting in its loss.

P.G. 212-08, Page 2, Paragraph 6

COMMAND OPERATIONS

3. Said Police Officer Jason Holloway, while on-duty and assigned to the 88th Precinct, on or about and between February 16, 2016 and January 2, 2018, on twenty-three (23) occasions, did fail and neglect to follow Department guidelines regarding Paid Detail, to wit: said Police Officer Holloway ended his Paid Detail assignments less than three (3) hours before starting his tour, began Paid Detail assignments within one (1) hour after his tour and engaged in Paid Detail assignments that overlapped his tour and/or RDO overtime.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

4. Said Police Officer Jason Holloway, while on-duty and assigned to Housing PSA 9, on or about October 25, 2018, did fail and neglect to safeguard his Department password resulting in queries being made on two (2) individuals known to the Department without knowledge of a job related purpose.

P.G. 219-14, Page 1, Paragraph 3

DEPARTMENT COMPUTER
SYSTEMS

5. Said Police Officer Jason Holloway, while on duty and assigned to Housing PSA 9, on or about October 25, 2018, did wrongfully use Department computers to make inquiries on an individual known to the Department unrelated to the official business of the Department.

P.G. 219-14, Page 1, Paragraph 3

DEPARTMENT COMPUTER
SYSTEMS

Disciplinary Case No. 2019-20832

1. Police Officer Jason Holloway, while out on sick report and assigned to PSA 9, on or about March 8, 2019 and March 13, 2019, while residing in Queens County, said Police Officer Holloway was wrongfully and without just cause absent from his residence without the permission of said Officer's District Surgeon and or Health Services Division Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4

**REPORTING SICK
PERSONNEL MATTERS**

2. Police Officer Jason Holloway, while on duty and assigned to PSA 9, on or about April 10, 2019, during an official Department investigation, conducted by Lieutenant Valenti and Sergeant Baer of Absence Control, did wrongfully make false statements, to wit: said Police Officer Holloway stated that after reporting to the District Surgeon on March 13, 2019 he went straight home, when that was not in fact true.

P.G. 203-08, Page 1, Paragraph 1

PUBLIC CONTACT - GENERAL

Disciplinary Case No. 2019-21322

1. Said Police Officer Jason Holloway, while off-duty and assigned to Housing PSA 9, on or about and between February 23, 2019 and September 29, 2019, wrongfully engaged in conduct prejudicial to the good order, discipline or efficiency of the Department, to wit: said Police Officer Holloway failed to update his address with the auto insurance company for his personal vehicle.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT
PROHIBITED CONDUCT**

2. Said Police Officer Jason Holloway, while off-duty and assigned to Housing PSA 9, on or about and between September 14 2018 and September 29, 2019, wrongfully engaged in conduct prejudicial to the good order, discipline or efficiency of the Department, to wit: said Police Officer Holloway failed to update his address with the New York State Department of Motor Vehicles.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

3. Said Police Officer Jason Holloway, while off-duty and assigned to Housing PSA 9, on or about September 23, 2019, having been given a lawful order by New York City Police by Sergeant Brandon Lomonaco to provide a copy of his driver's license, did wrongfully and without just cause refuse to comply with said lawful order.

P.G. 203-03, Page 1, Paragraph 2

P.G. 203-05, Page 1, Paragraph 1

**COMPLIANCE WITH ORDERS
PERFORMANCE ON DUTY**

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 28 and August 5, 2020. Respondent, through his counsel, pleaded Guilty to: Specifications 4 and 5 in Disciplinary Case No. 2018-18615; Specifications 1, 2, 3, 4, and 5 in Disciplinary Case No. 2019-20574; Specification 1 in Disciplinary Case No. 2019-20832; and Specifications 1, 2 and 3 in Disciplinary Case No. 2019-21322. Respondent, through his counsel, entered pleas of Not Guilty to: Specification 2 in Disciplinary Case No. 2019 20832; and Specifications 1, 2, and 3 in Disciplinary Case No. 2018-18615.

The Department called Police Officer Shawn Mohabir, Sergeant Annette Francis, and Lieutenant Ryan Kocher as witnesses. Respondent testified on his own behalf and offered evidence in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all the evidence in this matter, I make the following findings:

Disciplinary Case No. 2018-18615: Domestic Incident

Guilty of Specification 4: failure to remain at the scene of an unusual incident and Specification 5: failure to safeguard his Department issued firearm. With respect to contested Specifications 1, 2 and 3, I find that the Department Advocate has met her burden of proof with respect to the misconduct charged therein; I therefore find Respondent Guilty of Specification 1: engaging in a physical altercation; Specification 2: impeding a criminal investigation; and Specification 3: taking his girlfriend's phone and breaking it.

Disciplinary Case No. 2019-20574: Department Rules

Guilty of Specification 1: failure to prepare property voucher in a timely manner; Specification 2: failure to store his activity log, resulting in its loss; Specification 3: failure to follow guidelines regarding Paid Details; Specification 4: failure to safeguard his Department password; and Specification 5: wrongfully using Department computers.

Disciplinary Case No. 2019-20832: Out of Residence/False Statement

Guilty of Specification 1: absent without cause from his residence. With respect to contested Specification 2, I find that the Department Advocate has failed to meet her burden of proof with respect to the misconduct charged therein; I therefore find Respondent Not Guilty of Specification 2: making a false official statement.

Disciplinary Case No. 2019-21322: Failure to Maintain Accurate Residence Information

Guilty of Specification 1: failure to update his address with his auto insurance company; Specification 2: failure to update his address with update his address with the New York State Department of Motor Vehicles; and Specification 3: failure to provide a copy of his driver's license when ordered to.

Based upon the totality of the credible, relevant evidence in the record, I recommend that Respondent be DISMISSED from the New York City Police Department.

ANALYSIS

The following is a summary of the relevant testimony at trial regarding the contested charges.

Disciplinary Case No. 2018-18615: Domestic Incident

The Tribunal received in evidence a recording of a 911 call placed by A¹, Respondent's then-fiancée, as well as a transcription of the recording (Dept. Ex. 8, 8A). In the conversation which ensued, A can be heard telling the 911 operator that her boyfriend was trying to break in a door. An unidentifiable loud sound is heard, followed by a woman's scream. Respondent's voice is heard saying, "[unintelligible] never deal with you again. I ain't never deal with you again. You want to call cops? You call the cops? That's how you [unintelligible]. Yeah." (*Id.*)

Respondent then speaks to the 911 operator and says, "Yeah, I'm sorry. We, we, we called by mistake. You gonna till – you gonna sen-, still send the cops? Hello?" (*Id.*).

Police Officer Shawn Mohabir testified that in the early morning hours of February 20, 2018, he responded to a family dispute radio run which directed him to A's mother's residence ("the residence") (T. 24; Dept. Ex. 7A). When he arrived on scene at 0215 hours, Police Officer Mohabir met A, but Respondent was not present (T. 24-25, 30). Police Officer Mohabir observed that A appeared sad and upset; in addition, he observed that she had a 3-4" laceration on her forehead, which was bleeding (*Id.*, 27-30, 39-40; Dept. Ex. 6A, 6B).

According to Police Officer Mohabir, A told him that Respondent had come to the residence, apparently intoxicated, inquiring about the status of their relationship. After she let

¹ "A" is Respondent's girlfriend, known to the Department, and will be referred to as such throughout this decision for purposes of privacy.

him in, she suggested that they needed counseling, at which point she went to her bedroom and locked the door. Respondent reportedly “knocked² on the door repeatedly, they fell and that’s how she sustained the laceration to her forehead” (T. 25, 31; Dept. Ex. 3). A told Police Officer Mohabir that she became fearful when Respondent became irate and in order to protect herself, she locked herself in her room (T. 26; *Id.*).

Police Officer Mohabir testified that inside the residence, he observed that the door to A’s bedroom was broken in half: he originally asserted that the top portion of the door lay on the floor and the bottom half was still attached to the doorframe by the hinges but after having his recollection refreshed, he corrected his testimony to having observed the bottom half of the door on the floor³ (T. 27, 32-33; Resp. Ex. A). He also observed a duffel bag with Respondent’s name on it which appeared to contain Department equipment (T. 25, 30). Police Officer Mohabir recovered A’s mobile telephone from the hallway outside her apartment (T. 30, 38). The telephone instrument appeared to have been damaged⁴ (T. 30, 38; Dept. Ex. 2, 3, 5, 6C, 7A at 15).

Sergeant Annette Francis testified that she interviewed A at approximately 1000 hours on February 20, 2018, as a part of her investigation of the incident, as directed by the Borough Commander, Brooklyn South (T. 42). The interview was recorded and transcribed (Dept. Ex. 7A, 7B). At the time of the interview, A had just been released from the hospital (T. 43, 46).

² While Police Officer Mohabir testified that, according to A, Respondent knocked on the door repeatedly, in the Details section of the Complaint Report, he noted that “perp kicked c/v door repeatedly until it broke resulting in [perp and c/v] falling to the ground” (Dept. Ex. 3).

³ Respondent’s Exhibit A depicts a broken door with the bottom portion missing, in contrast with Police Officer Mohabir’s testimony that the top portion was missing. It is noteworthy, however, that the narrative on the Online Booking System Arrest Worksheet contains an assertion by A that “perp kicked c/v’s door repeatedly until it broke” (Dept. Ex. 4).

⁴ On the property voucher for A’s mobile telephone, Sergeant Francis described it as “heavily damaged” (Dept. Ex. 5). In A’s interview with Sergeant Francis, she asserted that her iPhone was damaged when Respondent pushed her while she was on the call to 911, resulting in the glass shattering and the loss of her contacts (Dept. Ex. 7A at 15).

Sergeant Francis described A's demeanor as upset and traumatized (T. 42-43, 49-50). A told Sergeant Francis that Respondent had come to her mother's apartment at approximately 0200 hours on February 20, 2018 (T. 43, Dept. Ex. 7A at 2-3). A asserted that she had been sleeping at the time Respondent came to the residence (*Id.*; Dept. Ex. 7A at 6). According to A, Respondent wanted to continue a discussion they had the previous day in which she suggested that they enter counseling prior to being married (T. 43-44; Dept. Ex. 7A at 5, 6). A believed that Respondent had been drinking, as she smelled alcohol on his breath (Dept. Ex. 7A at 7). A told Respondent that she did not want to discuss anything, as it was 0200 hours and she had to work in the morning (T. 44; Dept. Ex. 7A at 6). A went to the kitchen to get a glass of water, then entered her bedroom, locking the door behind her (*Id.*).

A stated that Respondent banged and pushed on the locked door, eventually doing something to the door which led her to suspect that Respondent was using a credit card to force the lock open (*Id.*; Dept. Ex. 7A at 8). A went to the door and pushed on it from the other side in order to keep it from opening, then placed a call to 911 from her mobile telephone (*Id.*, Dept. Ex. 7A at 10). As she was on the call, the door broke in two; both she and Respondent fell to the floor (T. 45; Dept. Ex. 7A at 8-9). A got up and ran from the apartment before banging on her neighbor's door across the hall (*Id.*; Dept. Ex. 7A at 9, 11). Her neighbor opened the apartment door and allowed A to seek refuge inside (*Id.*).

Sergeant Francis testified that the photographs of A's appearance depicted in Department Exhibits 6A and 6B were consistent with her recollection of how she appeared during their interview. A told her that she had received seven stiches and two staples to her forehead at the hospital. A opined that she could have sustained the injury to her head from either a stool or the

broken bedroom door when she fell inside the bedroom. A asserted that she sustained the injury as the result of Respondent pushing against the door (T. 45-46; Dept. Ex. 1, 7A at 8-9).

Respondent testified that on February 20, 2018, he took his son and A's two sons to Pennsylvania, where he and A's mother had purchased a home (T. 129). When he returned to the Brooklyn apartment he shared with A, a verbal argument ensued between them about spending time with his two children and her two children (T. 128-130). Respondent felt that A did not want to hear what he was saying and, instead, sought to discuss the mother of Respondent's daughter (T. 130-131).

Respondent testified that in an attempt to avoid discussing the topic further, he moved into the bedroom, where he kept his holstered firearm inside of the bedroom drawer, and locked the door (T. 131, 136). He testified that he and A continued to argue through the thin door (T. 131). Respondent explained that he was holding the doorknob to deny A entry into the bedroom while she attempted to gain access by pushing against the door (T.131-132). He stated, "at one point, when the door was about to open, I opened the door and [A] came falling through the door...the bottom half of the door, it broke" (T. 132). Respondent claimed that A broke the door, and sustained an injury when she got up from her fall as she was holding her head (T. 132-133, 145). Respondent believed that she "nicked her head on the way through the door" or that she may have hit her head on the stool positioned a few feet away from the door (T. 134). A then ran out of her apartment to the next door neighbor's apartment and knocked on the door (T. 134-135, 149).

Respondent claimed that A did not call 911 in his presence and that he was unsure of when she placed the 911 call (T. 146-147). He claimed that he picked up her phone from the

floor, and heard someone saying "Hello, Hello" (T. 182-183). Respondent stated that he spoke to the 911 operator in the hallway outside of their apartment, and told the 911 operator, "Sorry, it was a mistake" (T. 133-134, 147-148, 150, 182). He testified that he "said that because [he] didn't think [A] would call 911, when [he] felt a lot of the arguments, a lot of the things that happened in that particular scenario, w[ere] initiated by her" (T. 134). Respondent explained that he was unaware that A told the 911 operator that "[her] boyfriend's trying to break down the door," and that the sound of a door breaking was recorded on the phone call (T. 180-183). Respondent denied breaking A's phone or knowing how her phone was broken (T. 187).

Respondent left the residence and did not remain at the scene, as required by Members of Service when involved in an off-duty incident (T. 135). He testified that he drove back to Pennsylvania to be with his children at about 0200 hours (T. 135, 186). Respondent conceded that members of the Regional Fugitive Task Force picked him up from his home in Pennsylvania and escorted him back to his command (T. 186-187). Respondent stated that he was not attempting to flee any type of arrest situation or police involvement in the incident (T. 135-136). He "thought it would be an issue, but [he] didn't think it would be a big issue that it was" where he would go to jail and placed on modified duty status (T. 184). Respondent admitted that he should have remained at his residence to make sure that he complied with the Patrol Guide and his responsibilities as a police officer (T. 136).

Respondent was arrested on assault charges related to this incident but they were eventually dismissed (T. 137-138). Respondent and A continued their relationship until January 2020 (T. 137).

Credibility Assessment

I find that both Police Officer Mohabir and Sergeant Francis are disinterested witnesses who testified credibly regarding their interactions with A in a manner consistent with their respective assigned duties.

A and Respondent have offered competing, irreconcilable narratives of a single event in which they were both participants, making the credibility of each witness the fulcrum upon which findings will rely. Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. In a hearsay case of this nature, particular attention must be paid to the evidence. This Tribunal has held many times that while hearsay is admissible in administrative proceedings, and may be the sole basis for a finding of fact, it must be carefully evaluated before it is relied upon. The more important the evidence is to the case, the more critically it should be assessed (*Dep't of Correction v. Matthews*, OATH Index No. 228/14 (Nov. 18, 2013]). Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297 [1st Dep't 1994]).

In this case, untangling the truth from the record is particularly onerous because Respondent and A had a complicated relationship. At the time of the February 20, 2018, alleged domestic violence incident, they were engaged to be married and had begun to blend their respective families from previous relationships. Respondent and A cohabitated, along with her two children. The record supports a finding that at the time of the incident, the relationship was under stress and was ultimately terminated in January 2020.

After the alleged incident, Respondent moved from the [REDACTED] apartment he shared with A and resided for a time with her mother in [REDACTED] New York. Respondent and A's mother also appeared to have shared interests, as evidenced by their joint purchase of a home in Pennsylvania. It was that home in Pennsylvania to which Respondent had transported his son and A's children just before the February 20, 2018, incident and to which he traveled after he left her apartment.

As a party to this proceeding, Respondent is an interested witness. In addition, Respondent will shortly have sufficient service to vest for a 20-year retirement, giving him a substantial financial interest in the outcome of this litigation.

As set forth below in greater detail, I find A's hearsay statements to be reliable. I find Respondent to be an unreliable narrator and do not credit his testimony.

Specification 1: Engaging in a Physical Altercation

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent engaged in a physical altercation with A.

I have reviewed A's hearsay statement, entered into evidence as Department Exhibits 7 and 7A, and find it reliable for the following reasons: (1) the material assertions of fact contained therein were consistent with declarations she made to the 911 operator, Police Officer Mohabir and Sergeant Francis; (2) her first known assertion that Respondent was attempting to break into her bedroom was captured on a recorded call to 911, made contemporaneously with Respondent's attempts to enter by force; (3) the factual assertions A made on the 911 call were made under such circumstances as would qualify them as excited utterances, imbuing them with an indicia of reliability; (4) Police Officer Mohabir's and Sergeant Francis' credible testimonies that when each of them encountered A, she appeared to been acting under the effect of a recent

traumatic occurrence; and (5) A's material factual assertions regarding Respondent breaking her door in, suffering an injury to her head and having her phone damaged were corroborated by evidence of a broken bedroom door in her residence, observation of a bleeding laceration on her head which required medical treatment and the recovery of her damaged iPhone

I do not credit Respondent's assertion that it was he, and not A, who retreated into her bedroom and that it was she who broke the door in. I find this statement to be knowingly false. While these assertions are obviously self-serving, in the view of the Tribunal, it is Respondent's subsequent conduct which renders them palpably illogical. Had Respondent truly been on the receiving end of A's ire, manifested by her breaking in a door in her mother's residence, it would make sense for Respondent to welcome the arrival of police officers to quell the disturbance and document his innocent posture. Respondent could have identified himself on the call as a Member of Service and requested the response of a supervisor to the scene. Instead, Respondent was recorded expressing outrage that A had called the police and declared that he would never "deal with [her] again."

Respondent then spoke with the 911 operator and asserted that the call had been "a mistake." Finally, he asked the 911 operator whether she would "still send the cops." I find that this was a feeble attempt to turn off the cascade of events which Respondent was almost certain would ensue, further evidenced by his departure from the scene before responding officers could arrive. I find further that Respondent's actions evince consciousness of guilt and a strong desire to avoid being held accountable for his behavior.

Based upon, the foregoing, I find Respondent Guilty of Specification 1.

Specification 2: Impeding a Criminal Investigation

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent spoke to a 911 operator and asserted that the call had been placed in error for the purpose of impeding a criminal investigation.

As set forth above, Respondent was not an original participant in the conversation between A and a 911 operator, which A had initiated in order to receive police assistance. The evidence in the record persuasively establishes that Respondent was the aggressor in a violent encounter in which A was the victim, as she declared in that call. There is no plausible, innocent explanation for Respondent asserting to the 911 operator that the call had been placed in error: the clear import of his false assertion was that A, who had called 911 to seek protection from his actions, had “made a mistake.”

Had the 911 operator accepted this self-serving assertion, Respondent could have avoided, at least temporarily, official scrutiny from this Department. Had A attempted to bring this incident to the attention of this Department at a later date, it is likely that Respondent’s mollification of the 911 operator would have created a pre-positioned challenge to her veracity, i.e., a demand for her to explain why she failed to call the police at the time of the incident. Finally, Respondent’s query of whether the operator would still send police reveals his interest in having responding officers stand down, rather than a genuine mistake or confusion about what would happen in response to the call.

Based upon the foregoing, I find Respondent Guilty of Specification 2.

Specification 3: Damaging Cell Phone

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent took A’s cell phone from her and damaged it.

As set forth above in the credibility analysis pertaining to A, the Tribunal has credited her narrative, in part because her assertion that Respondent took her phone from her to speak to the 911 operator was corroborated by the recording of his voice on the 911 call. This established that he had possession of her telephone at some point during the incident.

In addition, her assertion that her telephone was damaged was corroborated by two independent witnesses, Police Officer Mohabir and Sergeant Francis. In her statement, A described the damage to her iPhone as a cracked screen and the loss of her stored contacts.

Police Officer Mohabir testified credibly that he recovered A's mobile telephone from the hallway outside her residence and that the telephone was damaged. Sergeant Francis ultimately vouchered the mobile telephone and described its condition on the property voucher as "heavily damaged."

Despite Respondent's incredible in-court denial that he did anything to A's telephone, I find that the credible evidence in the record establishes by a preponderance of the evidence that he and no one else damaged A's telephone.

Based upon the foregoing, I find Respondent Guilty of Specification 3.

Disciplinary Case No. 2019-20832

Specification 2: False Official Statement

Lieutenant Ryan Kocher testified that he is the Commanding Officer of the Absence Control Unit in the Medical Division (T. 53). On March 13, 2019, Respondent had an appointment with Dr. Reilly at 1 Lefrak Plaza⁵. Sergeant Doreen Hand was present at

⁵ It is undisputed that on March 13, 2019, Respondent was on modified duty status, as well as being on sick leave.

Respondent's residence at 0800 hours and observed him leave his home; she surveilled him until he reached 1 Lefrak Plaza. Once Respondent completed his medical appointment, Sergeant Hand observed him drive away from 1 Lefrak Plaza. Sergeant Hand was able to keep Respondent under surveillance for a period of time but discontinued it after he began driving in an evasive manner (T. 54-55).

A short time later, Sergeant Baer of the Absence Control Unit picked up the surveillance and observed Respondent operating a gray Lexus. Respondent drove to a BMW repair shop in [REDACTED], New York, where he stopped his car and had a conversation with a shop employee. Sergeant Baer observed a woman operating a white BMW drive up to the shop, step out of her car, then join the employee and Respondent; Respondent and the woman then departed the repair shop in the gray Lexus (T. 55-56).

Sergeant Hand had taken up surveillance of Respondent's residence, where she saw him arrive at approximately 1250 hours, holding a Dunkin Donuts cup. Respondent approached Sergeant Hand's vehicle and in a conversation which ensued, asserted that he had been returned to full duty as of 1200 hours (T. 56). Respondent signed Sergeant Hand's supervisor's travel log at 1254 hours (*Id.*; Dept. Ex. 10).

According to a clinic visit report obtained from the District Surgeon's office at 1 Lefrak Plaza, Respondent signed in for his appointment at 0853 hours and signed out at 0913 hours (T. 56-57; Dept. Ex. 9). The report also contained a notation "RET from sick 3/13/2019 at 2323 hours" (T. 57; Dept. Ex. 9).

Lieutenant Kocher testified that a Member of Service is expected to be at his residence until he is no longer out on sick report (T. 84). When a Member of Service is out on sick report,

the individual must notify the sick desk to update his location if he is conducting some sort of personal business (T. 80). Lieutenant Kocher asserted that a Member of Service may make a brief, incidental stop for 10-15 minutes without it being considered misconduct, such as a stop to use the restroom or purchase coffee (T. 80-81, 85-86). The policy, however, is that the Member of Service must update the sick desk with his movements (T. 81). Even if the Member of Service on limited duty is provided a time to return to full duty, the individual must still return and remain at his residence unless he updates the sick desk of his movements or the Medical Division makes the notification that the individual has returned to full duty (T. 82-83).

Lieutenant Kocher testified that Respondent's GO-15 interview was conducted on April 10, 2019 (T. 59; Dept. Ex. 11). When Respondent was asked "where did [he] go when [he] left at that time," Respondent answered, "I know I went, I mean probably, maybe, I don't know even know, I know I was headed back home. I headed back home" (T. 78-79; Dep't Ex. 11A at 20). Lieutenant Kocher explained that he considered the part of the statement, "I headed back home," to be unequivocal of going home (T. 79).

In his GO-15 interview, Respondent was asked if he thought he "went straight home after that after [he] left there;" Respondent answered, "I don't want to lie, I don't want to lie and say ... I'm assuming. I'm assuming ... I don't recall, I don't recall" (T. 64, 74; Dep't Ex. 11A at 21-22). Lieutenant Kocher acknowledged that Respondent did not respond "yes" to the question about going straight home, and that the GO-15 interview indicates that he did not recall (T. 75). When the interviewer asked Respondent if he went "to a service station in Valley Stream that day," Respondent answered, "No, I don't know that, no" (T. 64). Respondent was also asked if it was possible that he took his wife's car to the stop in [REDACTED], Respondent answered, "No, no I don't. If I knew" (T. 73; Dep't Ex. 11A at 22-23).

Respondent testified that he had an appointment with the district surgeon on March 13, 2019, at 0900 hours, which lasted approximately 30 to 40 minutes (T. 155). According to Respondent, he then “headed home and stopped at a service station, “cause [he] had [A’s] mom’s car. [A] had her car. [They] dropped off her car at the service station” (*Id.*). Respondent proceeded to stop for coffee and something to eat before arriving home at about 1230-1240 hours, where he found Sergeant Hand waiting for him (T. 155-156, 159). He acknowledged that it would have taken him about 45 minutes to drive directly home, but that there was about a three-hour delay between the time he left the district surgeon and the time he arrived at his residence (T. 156, 158-159).

Respondent testified that he believed that the sick desk allows Members of Service up to three hours to return home after a district surgeon visit if it requires three hours for the individual to return home (T. 158, 169-171). He did not call the sick desk, at any point, to report himself as out-of-residence (T. 158). Respondent admitted that he should have received permission to have the three hours of personal time during his travel time back to his residence, and he was in violation of the rules for modified officers on March 13th (T. 163, 172).

Respondent testified that during the April 10, 2019, GO-15 interview, he never told the investigators that he went straight home after reporting to the sick desk that day (T. 140). When he was asked if he went straight home after visiting the sick desk, Respondent told the interviewers “yes” at first, but then said that “[he] assumed – [he] assumed [he] was home” (T. 141). The interviewers informed Respondent that he had gone to a service gas station to drop off a BMW (*Id.*). Respondent stated that he did not remember going to the service gas station, and responded, “If you seen [sic] me doing it, I must have done it” (*Id.*). He believed that the rules of the sick desk allowed him to make a stop for gas or get a cup of coffee (*Id.*). Respondent testified

that, although the interviewers helped him with his gap in memory as to where he went that day, he was not trying to get in the way of their investigation, or obfuscate the charges or their ability to find the truth (T. 141-142).

I find that the Department has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent made a false official statement. It is undisputed that on March 13, 2019, Respondent stopped at a BMW repair station in [REDACTED] New York on his way home from a medical appointment. It is further undisputed that Respondent neither sought nor received authorization from either the District Surgeon or the Health Services Sick Desk Supervisor before making that stop at the repair station.

It is alleged that Respondent made a factual assertion which he knew to be untrue at the time he made it, i.e., that he went straight home after his medical appointment on March 13th. Based upon the entirety of the GO-15 interview, as well as Respondent's in-trial testimony, I find that it is just as plausible that Respondent made that assertion based upon his recollection of the incident, rather than a conscious attempt to mislead the investigators.

First, the interview took place 28 days after the medical appointment. The detour Respondent made to meet someone at a BMW repair shop is not so unique an event as to have been seared into his memory. Second, Respondent equivocated throughout the interview, using phrases such as, "I assume so," "I don't remember," "I don't want to lie," and "If you seen [sic] me, I must have." Third, Respondent readily abandoned his position once it was challenged by the investigators. It was likely clear to Respondent after a series of amplifying questions that he had been surveilled that day and the investigators knew exactly what he had done and when he had done it.

While it cannot be said that Respondent was particularly forthcoming in that interview, the credible, relevant evidence falls short of establishing that he intended to deceive the investigators by proffering a factual assertion he knew to be untrue. Accordingly, I find him Not Guilty of Specification 2.

EVIDENCE IN MITIGATION

Disciplinary Case No. 2019-20574: Department Rules

Respondent testified that on December 7, 2017, he was involved in an arrest of three individuals, which included the seizure of numerous items of property, including U.S. currency (T. 114). He claimed that he became “sidetracked as far as all of the things [he] had to do” (T. 114, 188-190). Respondent admitted that while he counted the money in his possession in the presence of the desk sergeant, he held onto it and did not voucher the money until seven to eight hours later (T. 114-116, 162).

On May 22, 2019, Respondent was working as a field trainer at the 88th Precinct, as well as a PBA delegate (T. 117). He explained that he had one locker for his PBA items and a second, separate locker for his personal items at the 88th Precinct (*Id.*). Respondent testified that when he was modified, he left his items, including his memo book, in his locker; the 88th Precinct then reassigned his locker to someone else (*Id.*). Respondent acknowledged that he was responsible for making sure that his memo book was stored and secured on his person, and that he did not do so (T. 117-118).

Respondent testified that between February 16, 2016, and January 2, 2018, he worked paid detail assignments at B&H Photos in Manhattan about once a month for 10 hour shifts in order to earn extra money (T. 118-119). He was aware that he was not permitted to work paid

detail assignments less than three hours before the start of his Police Department tour and not within one hour after his tour (T. 119-120). Respondent stated that he broke this rule because he worked paid detail in Brooklyn, from 0315 hours to 0750 hours, and had enough time to get to lower Manhattan for the commencement of his tour at 0830 hours (T. 120). He asserted that he was never late for work at the 88th Precinct, and never left the 88th Precinct early without attaining proper authorization to reach his paid detail assignment on time (T. 120-121).

On October 25, 2018, Respondent used a Department computer to run A's mother's name and inquire about her arrest the previous week (T. 121-122). Respondent testified that he was concerned he would get in trouble with the Department, since they were living at the same residence at the time (T. 122). He admitted that he did not safeguard his password and that he failed to sign-out of the computer after he checked into A's mother's arrest, which resulted in additional inquiries being made on two individuals (T. 122-123).

Disciplinary Case No. 2019 21322: Failure to Maintain Accurate Residence Information

Respondent testified that, between February 23, 2019, and September 29, 2019, he resided in [REDACTED] New York after moving from A's mother's home in [REDACTED], New York (T. 124, 173). He admitted that he did not update his address with his insurance company in a timely manner, even though he knew he was required to do so (T. 124-125, 173). Respondent also acknowledged that he failed to update his address with the New York State Department of Motor Vehicles, claiming that "so much" was going on with work and his personal life and that "it slipped [his] mind" (T. 125). He contemplated switching insurance companies, and compared insurance rates for both the [REDACTED] and [REDACTED] addresses before making an informed decision not to change insurance companies (T. 174-177).

Respondent testified that on September 23, 2019, Sergeant Brandon Lomonaco gave him a lawful order to provide a copy of his driver's license (T. 125-126). He stated that he attempted to fax a copy of his license to Sergeant Lomanaco when he returned to PSA 9 that same day, but never checked to see if the fax had been received (*Id.*). Respondent acknowledged that it was his responsibility to ensure that Sergeant Lomanaco received the faxed copy of his driver's license (T. 126).

Disciplinary Case No. 2019-20832: Out of Residence

Respondent testified that he was on sick leave on March 8, 2019, and March 13, 2019, and violated the Patrol Guide when he was absent from his residence without permission on both dates (T. 138-139). Sergeant Baer provided Respondent with instructions as to the requirements for Members of Service on modified duty and sick report on March 8, 2019 (T. 154, 168). Respondent stated that no one had previously explained to him the limitations on his movements while on modified duty (T. 168-169). He claimed that he was unaware of the special requirements for modified Members of Service while out on sick report, and thought that it was okay for him to leave his home if he left outside of his tour time (T. 139, 150). Respondent claimed that he did not know that "when you're modified, you have [to] be in the house 24 hours a day without leave" (*Id.*).

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. (*See Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Respondent was appointed to the Department on September 28, 2000. Information from his personnel record that was

considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate has recommended that Respondent be terminated. Based upon the seriousness of the misconduct of which Respondent has been found guilty, the nature of his previous misconduct, and his in-court demeanor, I concur in the recommendation.

There is Department precedent for respondents who have been found guilty of physical acts of domestic violence to be dismissed from this Department (*see e.g., Disciplinary Case No. 2015-13842* [November 3, 2017][10-year police officer with no formal disciplinary history was dismissed after being found guilty of: (1) engaging in a physical altercation; (2) failing to request the response of a Patrol Supervisor after being involved in a physical altercation; (3) making false statements during an official Department interview; and (4) making misleading statements during an official Department interview]; *Disciplinary Cases 2012-8560, 2013-10130* [June 9, 2017][12-year police officer with one prior adjudication dismissed after being found guilty of: (1) engaging in a physical altercation; (2) grabbing the cell phone of the victim and breaking it into pieces; (3) threatening the victim and pointing a firearm at her head; (4) wrongfully preventing the victim from leaving a hotel room; (5) failing to carry his Department shield while armed; (6) damaging a computer belonging to the victim; and (7) locking the victim in a bathroom and threatening her with physical harm and continuing to threaten her as she ran from his home]).

In some cases, respondents found guilty of physical acts of domestic violence were involuntarily separated short of dismissal (*see e.g., Disciplinary Case No. 2017-18271* [July 2, 2020][12-year police officer with no formal disciplinary history directed to enter into post-trial settlement which included filing for immediate vested-interest retirement, forfeiture of 33

suspension days previously served, forfeiture of 30 suspension days to be served, forfeiture of seven vacation days, one-year dismissal probation, cooperation with counseling, waiver of all time and leave balances, and waiver of suspension days after being found guilty of: (1) engaging in a physical altercation with her 16-year old daughter; and (2) endangering the welfare of a child. The Trial Commissioner recommended dismissal from the Department]; *Disciplinary Case No. 2017-17313* [August 2, 2019][12-year police officer with one prior adjudication directed to enter into post-trial settlement which included filing for immediate vested-interest retirement, forfeiture of 30 suspension days previously served, forfeiture of 30 suspension days to be served, one-year dismissal probation, cooperation with counseling, waiver of all time and leave balances, and waiver of suspension days after being found guilty of: (1) engaging in a physical altercation; and (2) endangering the welfare of two children. The Trial Commissioner recommended dismissal from the Department]).

Respondent has a formal disciplinary history. In 2012, Respondent forfeited 25 vacation days in connection with misconduct stemming from an earlier off-duty incident.

In three disciplinary cases, Respondent has plead guilty to relatively minor misconduct which evinces a cavalier relationship with the rules and regulations of this Department. More significant, however, is Respondent being found Guilty after trial of a violent domestic incident in which he pushed his way into a locked bedroom in which his girlfriend sought refuge from his entreaties to discuss their relationship at 0200 hours.

In addition to displaying a breathtaking lack of judgment, Respondent attempted to excuse his misconduct with a dubious narrative in which he was the alleged victim. Instead of accepting responsibility in the aftermath of the incident, in which his girlfriend was injured, by remaining on scene and calling for a supervisor, as set forth in the Patrol Guide, Respondent left

and drove to his second residence in Pennsylvania. His assertion at trial that he "didn't think it would be [the] big issue that it was" is a confession to his inability to truly appreciate the impact of his misconduct.

In a telling portion of his testimony, which I find credible, Respondent was asked by his counsel what he said to A after her bedroom door had been broken in and she arose from the floor with an injury:

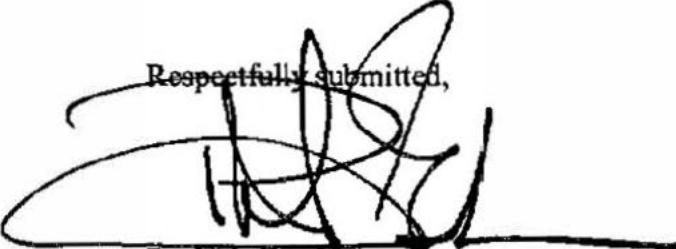
RESPONDENT: I, kind of, -- I, kind of laughed at her a little bit, because it was the heat of the moment. I don't know why I did it. Now that I think about it, it was dumb, but I laughed at her.
(T. 132).

Based upon the totality of Respondent's testimony, I find no evidence of mitigation. While the Tribunal found insufficient evidence to support the false statement charge in Disciplinary Case No. 2019-20832, I find that there is a thread of disingenuousness running through Respondent's previous misconduct, extending itself to his in court testimony. His seemingly casual assertions that he had never been advised of the limitations on his movements when on modified and/or sick status; that he "knew" the Sick Desk allowed up to three hours for a return to residence after a medical appointment, when he admitted it would have taken him a maximum of 45 minutes to return to his home had he done so expeditiously; and that he did not intend to flee the scene after breaking in his the door and leaving her bloodied suggest a misplaced confidence that he can navigate his way out of difficult situations with either professed ignorance or superior knowledge, depending on the situation.

I am mindful that Respondent will reach the milestone of 20 years of service this fall and of his stated desire to continue his employment with this Department. Based upon the record

before me, I cannot support a penalty recommendation which would permit Respondent to do so. I therefore recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED


OCT 23 2020
DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JASON HOLLOWAY,
TAX REGISTRY NO. 926421
DISCIPLINARY CASE NOS. 2018-18615, 2019-20574,
2019-20832, & 2019-21322

Respondent was appointed to the Department on September 28, 2000. On his last three annual performance evaluations, he twice received 3.5 overall ratings of "Highly Competent/Competent" for 2015 and 2016 and received a 4.0 overall rating of "Highly Competent" for 2014. He has been awarded two medals for Excellent Police Duty and two medals for Meritorious Police Duty.



In 2012, Respondent pled Guilty to (i) placing a 911 call under a false name, (ii) being discourteous to a ranking supervisor at the scene of an off-duty incident, (iii) being engaged in a physical altercation while off-duty, (iv) failing to notify the Department after being involved in an off-duty incident and (v) failing to immediately identify himself as a Member of Service to responding uniformed officers. For this misconduct, Respondent forfeited 25 vacation days and agreed to cooperate with counseling. In connection with that incident, he was placed on Level 2 Disciplinary Monitoring from April 27, 2012 to October 29, 2013.

In connection with the Charges and Specifications in the instant matter (Case No. 2018-18615), Respondent was again placed on Level 2 Discipline Monitoring on February 22, 2018; that monitoring remains ongoing. Respondent was also suspended in connection with that incident from February 20, 2018 to March 22, 2018 and has thereafter remained on modified assignment.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials